IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 1655 OF 2006

IN

WRIT PETITION NO. 5259 OF 2005

Smt.Leena Sandeep Sawant.... .... Applicant.
Versus
The State of Maharashtra & Ors.. ... Respondents.

Mr. V. V. Pai for the Applicant.

CORAM : R. M. LODHA &
NARESH H. PATIL, JJ.

DATED : 7TH AUGUST, 2006.

P.C. :

The Applicant’s father-in-law was in service of the State Government. While he was in service, he had been allotted a Government Quarter in the Government Colony at Bandra. As per the Government Resolution dated 10th September, 1996 a retiring Government Servant and the members of his family are allowed to retain service accommodation for a period of three months on a concessional rent. After superannuation of petitioner’s father-in-law, her husband came to be employed in the Office of the Superintendent of Stamps, General Stamp

Office as a Sepoy in a Class - IV post with effect from 6th May, 1992. The petitioner’s husband applied for transfer of Government Quarter allotted to his father to himself. The petitioner’s husband was asked to complete various formalities. Before the Government Quarter allotted to his father could be transferred, unfortunately, petitioner’s husband died on 11th December, 2004. As per the Government Resolution dated 10th September, 1996 after the demise of the Government employee, if, his or her family members do not obtain alternate accommodation within three months of the date of death, a maximum period of nine months is allowed, that includes the period of initial three months, with the permission of the Chief Secretary. After the death of her husband, the petitioner applied for compassionate appointment somewhere in the month of January, 2005. On 22nd July, 2005 the petitioner was given notice to vacate the official accommodation. She approached this Court by filing this writ petition challenging the eviction notice and also for direction to the respondents to consider her case for appointment on compassionate ground and for the release of the terminal dues and death-cum-retirement gratuity due and payable to her husband. The said petition came to be disposed of by the Division Bench of this Court on 8th February,

2006 by the following order :

"(i) The petitioner is granted time to vacate the premises until 31st May, 2006, subject to the filing of an undertaking in this Court within a period of four weeks from today by the Petitioner and her dependent sister that vacant and peaceful possession shall be handed over on or before the aforesaid date.

(ii) For the past, until 12th September, 2005, the arrears are computed at Rs.49,541/- as stated in paragraph 3 of the Affidavit in reply.

(iii) For the period from 13th September, 2005 until 31st May, 2006, we direct that rent shall be computed at the same rate as applicable in Clause (iii) of para 3 of the affidavit filed by the State, namely, for the period 13th March, 2005 to 12th September, 2005 on the basis of the GR dated 10th September, 1996.

(iv) The State Government shall pay to the

Petitioner all the terminal dues that are due and payable on account of the service of her late husband after deducting the arrears of rent as aforesaid, within a period of two weeks from the Petitioner handing over vacant and peaceful possession of the premises; and

(v) The case of the Petitioner for compassionate employment shall be duly considered in accordance with law."

2. Pursuant thereto, the petitioner filed an undertaking before this Court to the following effect:

"I hereby undertake to this Honourable Court that I along with my minor children and sister in law Smt. Rajashree Shantaram Sawant will quit and vacate and handover, peaceful and vacant possession to the respondents of the quarters in my possession i.e. Building 1/79, Government Colony, Bandra (East) on or before 31st May, 2006."

3. The petitioner did not honour the solemn undertaking given to this Court and applied for extension of time before the Vacation Judge.

4. The Vacation Judge on 19th May, 2006 found that there was no justifiable reason for extending time to vacate the quarter. However, it seems still thereafter, the Vacation Judge by way of last chance granted time till 31st June, 2006. The order dated 19th May, 2006, to the extent it is relevant, reads thus:

> "2. In fact, there is no justifiable reason for extending time to vacate the quarter. However, only on the request of the learned Counsel for the petitioner, the time is extended as a last chance till 30/6/2006. The petitioner is directed to vacate the quarter on that day positively."

5. Though the Vacation Judge made it very clear that time is extended as last chance till 30th June, 2006 and that the petitioner was directed to vacate the quarter on that day positively, yet the petitioner did not honour the undertaking and extension of time and made an application for further extension of time.

6. An undertaking to the Court is solemn statement made by the parties and that such undertaking needs to be

honoured at all cost is beyond question. The Court was aware of the hardship suffered by the petitioner and therefore, in its order dated 8th February, 2006 granted more than three months time to the petitioner to vacate the Government Quarter on the undertaking as noticed above. Three and a half months is reasonable and sufficient period to find out alternate accommodation. Instead of vacating the Government accommodation for which undertaking was given by the petitioner, an application was made for extension of time before the Vacation Judge. The Vacation Judge did not find any justification, yet showed some mercy and extended time upto 30th June, 2006. Yet, again the petitioner did not vacate the Government accommodation but made application for extension. Justice can be tempered with mercy to some extent but all mercy is no justice. Justice can be supplemented by mercy but mercy cannot be allowed to supplant justice. The undertaking given by the petitioner in its solemnity had to be honoured. It is true that the petitioner has been put to hardship but that does not mean that she can be permitted to continue to remain in occupation in Government accommodation to which she is not entitled.

7. We are, thus, satisfied that the application made by

the petitioner for further extension does not deserve to be granted. If, by 31st August, 2006, the petitioner does not vacate the Government quarter, namely, I/79, Government Servants Colony, Bandra (East), Mumbai, the Competent Authority shall be free to evict her forcibly. In that event, she will also expose herself to the willful disobedience of the undertaking given by her to this Court and may be proceeded with for contempt of this Court.

8. Civil Application is dismissed.

Sd/-

(R. M. LODHA, J.)

Sd/-

(NARESH H. PATIL, J.)